

1 *House* BILL NO. *601*
 2 INTRODUCED BY *Enoch VINCENT Mosher*
 3 *Harper*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ELEMENTS
 5 OF PROOF FOR RECOGNITION OF PRESCRIPTIVE TITLE IN THE PUBLIC
 6 TO A ROAD OR WAY; AND TO PROVIDE FOR A PROCEDURE FOR
 7 DECLARATION."

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 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Public road or way--easement by
 11 prescription--elements of proof--procedure. A district
 12 court may grant a decree recognizing an easement by
 13 prescription for a public way or road to a petitioner who:

14 (1) has filed a petition for such a decree accompanied
 15 by an affidavit signed by each of five (5) persons stating
 16 that each person has:

17 (a) used the road or way at least once in each of five
 18 (5) years in a six (6) year period occurring during the
 19 twelve (12) year period previous to the filing of the
 20 action; and furthermore that:

21 (b) the landowner through whose land the road or way
 22 passes did not oppose the use;

23 (c) there was no evidence known to them that the use
 24 of the road or way was permissive; and

25 (d) each user considered the road or way to be public.

1 (2) has filed a notice of hearing the petition with
 2 the county clerk and recorder of each county in which
 3 property involved is situated showing:

4 (a) the title of the court in which the petition is
 5 filed; and

6 (b) a description of the property involved; and

7 (3) has mailed a copy of the petition, affidavit and
 8 notice of hearing ten (10) days prior to the date set for
 9 hearing to the landowner.

10 (4) If no one appears to protest the content of this
 11 petition the court may proceed to grant the decree.

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